



Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

**Matter of:** American Marketing Associates, Inc.

**File:** B-274454.3

**Date:** January 10, 1997

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### DECISION

American Marketing Associates, Inc. (AMA) protests the award of a contract to PSA Home Healthcare under request for proposals (RFP) No. 554-52-96, issued by the Department of Veterans Affairs (VA) for home oxygen services and equipment for a base with 4 option years.

We dismiss the protest.

The RFP provided a best value basis for award and identified the following evaluation factors: (1) proof of current certification of joint commission on accreditation of health organizations; (2) therapists certified or registered by the National Board for Respiratory Care; (3) technical capability to meet the contract requirements; (4) past performance; and (5) price.

VA received proposals from three offerors, including AMA and PSA (the incumbent contractor), and determined that PSA's offer was the most advantageous to the government under the evaluation criteria. Following the agency's notification of award to PSA, AMA protested to the agency, asserting that a member of VA's evaluation board had a conflict of interest because she worked part-time for a subsidiary of the awardee. VA denied AMA's agency-level protest, and AMA protested the award to our Office.

Prior to filing its report on the protest, VA informed our Office that a new evaluation board would be convened without the member challenged by AMA, that best and final offers (BAFO) would be requested, and a new evaluation and source selection decision made. We dismissed AMA's protest as academic because the protester had received the relief it reasonably could expect from our Office were we to find that the protest had merit.

AMA timely requested reconsideration of our dismissal, asserting that AMA was entitled to, among other things, the appointment of an entirely new evaluation board. VA then agreed to appoint an entirely new evaluation board to evaluate BAFOs, and, based upon this agreement, AMA withdrew its reconsideration request.

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BAFOs were received from AMA, PSA, and the other offeror. PSA's BAFO, which received 94.9 of the 100 available evaluation points, was evaluated as significantly superior to AMA's BAFO, which received a 51.9 evaluation score. VA determined that PSA's slightly higher-priced BAFO was more advantageous to the government than AMA's BAFO and affirmed its earlier award to PSA. Upon learning that VA had not impaneled an entirely new evaluation board, as had been promised, AMA protested that VA's evaluation was tainted by the conflict of interest.

The record shows that 2 members of the original 3-person evaluation board were members of the new 5-person evaluation board; the evaluator whom AMA originally challenged as having a conflict of interest did not serve on the new evaluation board. VA contends that the composition of its evaluation panel is within its discretion, that it removed the one evaluator whom AMA asserted had a conflict of interest, and that, in any event, there has been no showing that this alleged conflict of interest had any impact on the evaluation of proposals.

Contracting agencies are responsible for reviewing potential conflicts of interest posed by relationships between evaluators and offerors in order to ensure the impartiality in the evaluation and to preserve the integrity of the procurement process. DRI/McGraw-Hill, B-261181; B-261181.2, Aug. 21, 1995, 95-2 CPD ¶ 76. Where a protester asserts that an evaluator is biased because of his past experiences or relationships, we will examine the nature of the relationship and whether the evaluator exerted improper influence in the procurement on behalf of the awardee or against the protester. Id. We will not sustain a challenge to an agency's evaluation based upon an evaluator's alleged conflict of interest, where there is no showing that the protester's competitive position was affected by the alleged conflict of interest. See Creative Management Technology, Inc., B-266299, Feb. 9, 1996, 96-1 CPD ¶ 61.

Here, the agency has provided its evaluation documentation to support its evaluation of PSA's and AMA's BAFOs. This documentation, which was provided to AMA's counsel under a General Accounting Office protective order, on its face supports the agency's determination that PSA's BAFO was significantly superior to AMA's BAFO. While AMA complains that the evaluation was the result of the conflict of interest or bias for PSA or against AMA, the protester does not identify any specific evaluation conclusion that AMA's asserts is unreasonable or incorrect. Given this failure to identify any errors or unreasonable conclusions in VA's BAFO evaluation, we have no basis to find that the agency's evaluation was unreasonable or that AMA's allegations of conflict of interest or bias, even if true, affected the protester's competitive position. Competitive prejudice is an essential element of every viable protest, and where no competitive prejudice is shown, our Office will not sustain a protest. Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379. Given AMA's failure to identify any evaluation errors attributable to its

allegations of conflict of interest or bias, we find that AMA has failed to state a valid basis for protest and dismiss its protest on this basis. Bid Protest Regulations section 21.5, 61 Fed. Reg. 39039, 39045 (1996)(to be codified at 4 C.F.R. § 21.5).

The protest is dismissed.

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